

**ARIZONA SUPREME COURT
ADMINISTRATIVE OFFICE OF THE COURTS
INVESTIGATION SUMMARY and PROBABLE CAUSE ANALYSIS
and DETERMINATION REPORT**

<i>CERTIFICATE HOLDER/LICENSEE INFORMATION</i>	Certificate Holder:	Mary Jane Condit
	Certification Number:	20517
	Business Name:	Condit and Associates, LLC
	Certification Number:	20597
	Type of Certificate/License:	Fiduciary
<i>COMPLAINANT</i>	Name:	William Jennings
<i>INVESTIGATION INFORMATION</i>	Complaint Number:	15-0013/0014
	Investigators:	William MacIntyre

Complaint Received:	6/22/15
Complaint Forwarded to the Certificate Holder:	6/29/15
Certificate Holder/Licensee Received Complaint:	7/2/15
Response From Certificate Holder:	7/28/15
Period of Active Certification/Licensure:	Pending Renewal
Status of Certification/License:	Active
Availability of Certificate Holder/Licensee:	Available
Availability of Complainant:	Available
Report Date:	1/27/16

ALLEGATIONS:

- 1) Complainant Jennings, a beneficiary of a trust which Condit is trustee, states Condit is taking too long for the disbursements.
- 2) Jennings also complained Condit unnecessarily held back \$50,000 of the estate for tax purposes.
- 3) Condit modified the "Receipt and Release" document in a manner that would indicate receipt for full payment of all distributions instead of partial payment.

List of sources for obtaining information: (Investigative, records, outside resources, etc.):

- Written complaint and documentation submitted by complainant William Jennings
- Written response and documentation submitted by certificate holder Mary Jane Condit
- Review of applicable Certification and Licensing Division ("Division") records

- Review of applicable sections of Arizona Revised Statutes (“ARS”), Arizona Codes of Judicial Administration (“ACJA”) § 7-201 and § 7-202, and Arizona Supreme Court Rules
- Maricopa County Superior Court Case: PB2014-070630

PERSONS INTERVIEWED:

Mary-Jane Condit (CH), William Jennings (Complainant)

SUMMARY OF INVESTIGATION:

Samuel W Green created a Revocable Trust on 7/19/01, naming his wife Joan as First Successor Trustee and Condit as Second Successor trustee. Mr. Green passed away on 2/25/14 and the following month (3/17/14) Joan resigns as Trustee. Condit was notified of this on 4/10/14 and she was officially appointed as Successor Trustee on 6/10/14.

In his written complaint and subsequent phone interview, Jennings (a relative and beneficiary) is complaining that he and other beneficiaries did not receive any correspondence until December 2014 and had to wait until March 2015 to sign a release. Along with the release was notification that he and others would have to wait an additional 18 months for total disbursements due to potential tax consequences. Jennings believes the process is taking too long and insinuates incompetence with Condit. Jennings also references \$50,000 that Condit claims to have put aside for the possible tax consequences alluding unethical practices on her part.

Condit provided documents and a time table with her response claiming nothing inappropriate occurred. Condit states this is a normal time frame given the complexities of the Trust. Condit did admit that the “Receipt and Release” form sent to Jennings didn’t specify it was a “partial” distribution, however, this had no effect on the actual distribution. Condit stated that all beneficiaries were properly noticed, were given detailed information of her duties and all were provided account statements.

SUMMARY OF FACTUAL FINDINGS OF INVESTIGATION:

Court records, documents and correspondences confirm Condit was appointed as Successor Trustee in June 2014 and also reflect complainant Jennings received and cashed his “First Partial Distribution” about one year later; in June 2015. In her written response, Condit provided a detailed timeline of her trust duties supported by documents she previously prepared and mailed to all the beneficiaries. Included is Condit’s “Proposed Plan of Distribution” (PPD) which outlines the various beneficiaries’ shares and references her “estimates” for final fees and potential taxes. The PPD estimates for CPA services, fiduciary fees and the taxes amount to the \$50,000 Jennings insinuates Condit is unnecessarily holding.

Documents reflect Jennings signed his PPD on 5/19/15 thus acknowledging the estate assets and the \$50,000 put aside by Condit for unforeseen liabilities. Documents further confirm all beneficiaries were mailed copies of the trusts inventories in September 2014 and copies of the "First Accounting" in December 2014. Records reflect Jennings signed his copy of the "Approval and Release" of same a few weeks after receiving it. The "Second Accounting" along with the PPD was mailed to all in May 2015 with a request to approve, sign and return same to Condit. Condit received all these signed documents, including the ones from Jennings, by May 27, 2015.

The "First Partial Distribution" from the trust was made on June 3, 2015 to all beneficiaries and included a "Receipt and Release" for them to sign and return. Although Jennings cashed his distribution check, he was the only beneficiary who didn't sign the receipt. In his complaint, Jennings specifically complained about the receipt and claimed that "a lot of things Xed out which made it look like this was a final and total payment." Jennings further stated "I will not sign this." Jennings further complained that "given the amount of time this has taken I am sure the final disbursement will be well over 2 years. This should have been a simple process that should have been resolved last Sept. 2014." Jennings added "I may not be a lawyer but I know when I am being scammed."

In her written response and subsequent phone interview Condit explained some of the intricacies and details of her trust duties. Condit explained part of the issue was that Joan Green was to receive a "specific bequest of in-kind assets" related to life estate assets for part of the real property held by the trust. Upon Condit's appointment, Condit was informed by other parties that Ms. Green's intent was uncertain at the time as to the property and that she wanted to maintain her interest. Condit claims she informed all beneficiaries of this detail which necessitated keeping the Trust open and delayed distributions.

As to the "Xed out" portions of the "Receipt and Release" which Jennings referred to, the document reveals Condit modified the document in a manner that caused the signor to "acknowledges that the distribution listed herein represents the share of this Trust to which the undersigned is entitled." The document, as modified, further releases Condit and Associates from all liability and from future liability and accountability in connection with the administration of the trust. The document itself appears to be of a template format with several sentences utilizing dual purpose verbiage. For example, several sentences include statements such as ".....above referenced Estate/Trust", thus allowing the documents author to "XXX" whichever word does not apply. On these particular "Receipts", Condit simply referenced her duties for the "trust" rather than the "estate." Condit did acknowledge she "XXX"ed the entire "partial/final" distribution wording (in lieu of indicating a partial distribution). Condit claimed it ultimately had no effect. A sample of the "Receipt and Release" is attached as Exhibit A.

Condit stated she made the decision to delay some of the distributions while Ms. Green continued living in the property contemplating potential expenses in the event the home needed to be liquidated. In October 2014 Condit was informed by the co-trustees Ms.

Green had made the decision to sell the home which was documented in the Second Account Report and provided to the beneficiaries. Condit claims the only remaining tasks are to file the 2015 Fiduciary Income Tax Return and form 4810 requesting the I.R.S. Prompt Assessment of tax filings. Condit says that once she receives the receipt of tax clearance from the I.R.S., the balance due the beneficiaries will be paid as the second and final distribution.

ANALYSIS OF ALLEGATIONS:

Allegation 1: Complainant Jennings, a beneficiary of a trust which Condit is trustee, states Condit is taking too long for the disbursements.

Although the final distributions of the SWG Trust are pending I.R.S. completion, documents confirm that the majority of distributions were made within twelve months of Condit's appointment (Which is within the 24 month standard in Maricopa County). Records also confirm all beneficiaries were timely notified of status updates throughout the Trusts' management and there was no evidence of any untimely procedures. Allegation 1 is therefore unsubstantiated

Allegation 2): Jennings also complained Condit unnecessarily held back \$50,000 of the estate for tax purposes.

The PPD, which complainant Jennings acknowledged and signed, included Condit's estimated withholding of the \$50,000 for miscellaneous closing expenses. This amount includes "estimates" of approximately \$19,000 for fiduciary and miscellaneous expenses and \$30,000 for unforeseen tax liabilities. "Condit and Associates" explained that although the final taxes have been completed for the SWG Trust, the estate cannot be closed until the expiration of a potential I.R.S. audit window which expires May 2017.

The practice of holding back trust assets for unforeseen expenses is not uncommon in Trust management cases. Documents reflect the \$50,000 (minus approximately \$12,000 in administrative fees, taxes and costs) is still included in the trust assets and set to be disbursed upon its closure. Condit explained that her "estimate" of \$19,000 in fiduciary fees is based on several remaining tasks required to completely close the trust including various interactions with the (10) beneficiaries and any potential tax or legal issues due to the trust administration history. Condit points out numerous final administrative tasks which include the final year of tax preparation, various correspondences with the I.R.S. preparation of the PPD Part One and calculations of all reserves for the I.R.S., ongoing monthly review of the operating account as well as other administrative tasks will be necessary to completely close the trust. Allegation 2 is therefore unsubstantiated.


Allegation 3): Condit modified the "Receipt and Release" document in a manner that would indicate receipt for full payment of all distributions instead of partial payment.

A review of the release language does indicate that Condit modified the release language in a manner to cause it to describe a full distribution of all Trust assets and full release of

liability for Condit and Associates. As described in allegation 2, this release language was used at the same time that at least one beneficiary was complaining about the amount of funds that Condit was holding in reserve for future tax liability and payments to Condit and Associates. Condit allowed the complaining beneficiary to receive the distribution without signing the form.


By failing to prepare proper release and receipt documents, Condit failed to "exercise the degree or care, skill and proficiency commonly exercised by ordinary skillful, careful and prudent professional certificate holders" per ACJA § 7-201 (H)(6)(k)(7). Allegation 3 is therefore substantiated.

SUBMITTED BY:

 1/27/16

William MacIntyre, Investigator Date
Certification and Licensing Division

REVIEWED BY:

 11/1/16

Certification and Licensing Division Date

DECISION OF THE PROBABLE CAUSE EVALUATOR:

Having conducted an independent review of the facts and evidence gathered during the course of the investigation of complaint number **15-0013/0014**, the Probable Cause Evaluator:

☐ requests division staff to investigate further.

☒ determines probable cause does not exist the certificate holder has committed the alleged acts of misconduct as to Allegation(s):

1 & 2.

☒ determines probable cause exists the certificate holder committed the alleged acts of misconduct as to Allegation(s):

3

 11/2/16

Mike Baumstark Date
Probable Cause Evaluator

**ARIZONA SUPREME COURT
ADMINISTRATIVE OFFICE OF THE COURTS
ORDER OF THE BOARD**

<i>CERTIFICATE</i>	Certificate Holder:	Mary Jane Condit
<i>HOLDER/LICENSEE</i>	Certification Number:	20517
<i>INFORMATION</i>	Business Name:	Condit and Associates, LLC
	Certificate Number:	20597

Prior Discipline:

07-0026 Letter of Concern for charging estate for answering a complaint.

14-0015 Letter of Concern failure to maintain accurate records of ward's property.

Recommendation:


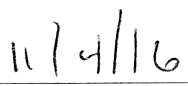
It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding Mary Jane Condit and Condit and Associates have not committed the alleged act(s) of misconduct as detailed in the Allegations 1 and 2 of the Investigation Summary and Allegation Analysis Report in complaint number 15-0013/0014.

It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding Mary Jane Condit and Condit and Associates have committed the alleged act(s) of misconduct as detailed in the Allegation 3 of the Investigation Summary and Allegation Analysis Report in complaint number 15-0013/0014.

It is recommended the Board enter a finding grounds for informal disciplinary action exists pursuant to Arizona Code of Judicial Administration ("ACJA") § 7-201(H)(6)(a) for act(s) of misconduct involving ACJA § 7-201(H)(6)(k)(7) for failure to exercise care, skill and proficiency in the preparation of the releases.

It is further recommended the Board issue a Letter of Concern.

SUBMITTED BY:

	
Director	Date
Certification and Licensing Division	

RECEIPT AND RELEASE

I, [REDACTED], beneficiary of the

SAMUEL W. GREEN IRREVOCABLE ~~XXXX~~ Trust, hereby

acknowledge receipt of the enclosed check, # 1273 in the amount of

(both numerically and alphabetically) \$ 69,789.63

Sixty-Nine Thousand Seven Hundred Eighty-Nine Dollars and Sixty-Three Cents*****

as a ~~partial~~ distribution from the above referenced ~~Estate~~ Trust and forever

discharge and release Condit and Associates, LLC, ~~as Personal Representative~~

~~of the~~ XXXXXXXXXXXXXXXXXXXXXXXXXXXX Estate ~~OR~~ as Trustee of the

SAMUEL W. GREEN IRREVOCABLE

Trust from further liability or

accountability in connection with the administration of the ~~Trust~~ Estate.

The undersigned acknowledges that the distribution listed herein represents the ~~partial/entire~~ share of this ~~Trust~~ Estate to which the undersigned is entitled.

The beneficiary represents and warrants that he/she has the exclusive right to execute this agreement and received the property and the sum of money specified herein. This Release and Receipt shall be binding upon the beneficiary, the beneficiary's heirs, legal representatives, successors and assigns.

By: [REDACTED]
Beneficiary name printed here

Date: 18 June 2015

EXHIBIT A



Supreme Court

STATE OF ARIZONA
ADMINISTRATIVE OFFICE OF THE COURTS

November 10, 2016

Scott Bales
Chief Justice

David K. Byers
Administrative Director
of the Courts

Mary Jane Condit
Condit and Associates
13912 W. Stardust Blvd., Suite 200
Sun City West, AZ 85375

RE: LETTER OF CONCERN - Complaint Numbers 15-0013/15-0014

Dear Ms. Condit:

On November 10, 2016, the Fiduciary Board ("Board"), pursuant to the Arizona Code of Judicial Administration ("ACJA") § 7-201(H)(6)(a), (H)(7), and (H)(24)(a)(6)(a):

1. Reviewed the attached Investigation Summary, Probable Cause Evaluation Report, and Recommendation;
2. Entered a finding grounds for discipline exist in this complaint;
3. Ordered resolution of the complaint through an informal disciplinary sanction; and,
4. Entered the enclosed Order to issue this Letter of Concern as to Allegation 3.

ACJA § 7-201(H)(24)(b)(2) provides:

A letter of concern is a written informal discipline sanction and is not appealable. A certificate holder may file a response to the letter of concern no later than fifteen days after the date of the letter of concern. The certificate holder's response is public and division staff shall file the response in the complaint file.

If you choose to submit a written response, please address it to the Board. Pursuant to ACJA § 7-201(H)(1)(g) and (H)(24)(b)(2), this Letter of Concern and your response are not confidential.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah Primock", is written over a horizontal line.

Deborah Primock, Chair
Fiduciary Board

Enclosures